IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4238 OF 2007

Laxmi Ashok Jadhav & Anr. ...Petitioners

Versus

Kalabai S. Kamble ...Respondent

Shri Girish Godbole for the Petitioners
Shri Rahul Kate with Shri R.R.Mahagaonkar for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : JULY 16, 2007.

P.C.:

1. Rule. Advocate for the Respondent waives service. Considering the facts and circumstances of the case, the Writ Petition is forthwith taken up for final hearing.

2. The Petitioners are the original Defendants in a suit filed by the Respondent. The suit filed by the respondent is for declaration and injunction. An Application for temporary injunction was filed in the said suit by the Respondent which was allowed in part by order dated 09th March, 2005 passed by the trial Court. An Appeal was preferred by the present Petitioners under clause (r) of Rule 1 of Order XLIII of the Code of Civil Procedure, 1908. By the impugned order, the learned Adhoc District Judge 3, Satara dismissed the Appeal preferred by the Petitioners and allowed the cross

Appeal preferred by the Respondent.

3. With the assistance of the learned counsel appearing for the parties, I have perused the impugned Judgment of the learned Adhoc District Judge. The effect of the impugned order is that the Application at Exhibit 5 made by the Respondent has been fully allowed.

4. The reasons recorded by the learned Judge run only into one paragraph. To say the least, it is very difficult to understand the Judgment of the learned Judge. It is impossible to find out as to why the learned Judge has come to the conclusion that the Respondent had proved existence of a prima facie case. It can be safely said that the Appellate Court has not discharged its duty. The impugned Judgment will have to be quashed and set aside only on the ground that the same is perverse. The inevitable consequence is an order of remand.

5. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 23rd February, 2007 is quashed and set aside and Misc. Civil Appeal No.139 of 2005 as well as Misc. Civil Appeal No.156 of 2005 is restored

to the file.

(ii) The parties are directed to appear before the learned Principal District Judge at Satara on 13th August, 2007 at 11.00 a.m for fixing the schedule of the hearing. The learned Principal District Judge may himself hear the Appeal or may assign it to any other Judge considering the administrative convenience.

(iii) All contentions of the parties on merits of the Appeals are kept open.

(iv) If any interim or ad-interim relief was operating during the pendency of the aforesaid Appeals, the said stands restored.

(v) The Appeal shall be decided as expeditiously as possible and preferably before end of the year 2007.

(vi) The Registrar (Judicial I) is directed to forward a copy of the impugned Judgment and Order alongwith a copy of this order to the Registrar General for taking necessary action on the administrative side.

JUDGE